IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-10-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION Nos.4332 & 8922 OF 2007

1.Victor Auxilium
2.Susainathan .... Petitioners in Crl.O.P.No.4332/2007

Auxillia ... Petitioner in Crl.O.P.No.8922/2007

-vs-

1.State,
rep.by Assistant Commissioner of Police,
W-19 All Women Police Station,
Adyar,
Chennai - 600 020.

2.V.Florin Vinolia ... Respondents in both petitions
Impleaded as per order
dated 04.04.2007 & 02.04.2007 in MP.3/07

Petitions under Section 482 of the Code of Criminal Procedure praying for to quash the charges framed as stated therein.

For petitioners in Crl.O.P.No.4332/2007: Mr.A.Raghunathan,
for M/s.S.S.Jayanthi.
For petitioner in Crl.O.P.No.8922/2007 : Mrs.V.Uma Shankari

For respondent 1 in both petitions : Mr.A.Saravanan,
Govt.Advocate (Crl.Side).

For respondent 2 in both petitions : Mr.Ramesh,
for M/s.Ram & Ram

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O R D E R

These petitions have been filed to call for the records in C.C.No.3819 of 2006 on the file of IV Metropolitan Magistrate, Saidapet, Chennai, and to quash the same.

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2. For the sake of convenience, the status of the parties, as mentioned in Crl.O.P.No.4332 of 2007, would be referred and the petitioner in Crl.O.P.No.8922 of 2007 by name Auxilia.

3. The facts, in a nutshell, are as under :

3.1. First petitioner is son of second petitioner and second respondent is the de facto complainant, who is wife of first petitioner. The marriage of first petitioner and second respondent was celebrated on 22.06.2000 in St.Theresas Church, Trichy.

3.2. At the time of marriage, all the accused demanded 80 sovereigns of gold jewels and Rs.6.00 lakhs in cash towards dowry, however, the parents of the de facto complainant offered 50 sovereigns of gold jewels, besides a sum of Rs.1.00 lakh in cash. The couple was living at Thiruvanmiyur in Chennai. First accused left for Singapore and returned back after one year. In August, 2001, he took the de facto complainant to Singapore. While the spouses were at Singapore, second and third accused made phone calls to fist accused, by means of which the attitude of first accused changed suddenly and he started demanding a sum of Rs.10.00 lakhs from the de facto complainant, stating that if she did not bring Rs.10.00 lakhs, he would send her back to her parents. While the de facto complainant asked her parents over phone, they replied that they could not arrange Rs.10.00 lakhs at once, which information was conveyed to first accused, for which he replied that they had to demand Rs.10.00 lakhs even at the time of marriage, which they did not, and further asked her to arrange for the amount. Thereafter, first accused called second accused to Singapore and sent the de facto complainant with him to India on 07.02.2002. Further, he proceeded to arrange for cancellation of visa for the de facto complainant on 20.03.2002, consequent upon which it was cancelled. When the de facto complainant asked second and third accused over phone to arrange for re-union, they told her that only if she arranged Rs.10.00 lakhs, they would make efforts for re-union and disconnected the conversation. Second accused contacted the de facto complainant in April,2002, stating that first accused was coming down to India in that month and Rs.10.00 lakhs might be kept ready and only, thereupon, they would send her with first accused to Singapore, if not, they would celebrate second marriage to him and settle them at Singapore itself. The de facto complainant approached third accused at once and asked her to take steps for re-union, whereby she also told that only if de facto complainant paid Rs.10.00 lakhs, they could do something.

3.3. On 24.04.2005, second accused contacted the father of de facto complainant over phone and asked him to pay Rs.10.00 lakhs, since first accused had arrived in India. Thereafter, the de facto complainant came to know that first accused contacted second marriage with one Kavitha at Singapore.

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3.4. First respondent police, after investigation, laid charge sheet against the accused for the offences punishable under Sections 498A and 494 IPC and Section 4 of Dowry Prohibition Act.

3.5. On 02.02.2007, the trial Court framed charges against the accused. While all the three accused were charged under Section 498A IPC and Section 4 of Dowry Prohibition Act, the offence under Section 494 IPC was framed against first accused alone.

4. The contention of the petitioners in both the petitions are two folded, namely, (i) first respondent police has no territorial jurisdiction to investigate the case, as the allegations in the F.I.R. would clearly portray that every stage of offence was held in Singapore, besides the reason being that though the marriage was celebrated in Trichy and first accused was also a resident of Trichy, he left for Singapore immediately after the marriage and both the spouses were leading married life in Singapore for sometime, particularly, during when the alleged demand was made, and (ii) as per Section 198 (c) Cr.P.C., where the person aggrieved by an offence punishable under Section 494 or 495 IPC is wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister and since the offence under Section 494 IPC is not expected to be investigated by police, the de facto complainant should have laid a private complaint before the jurisdictional Magistrate Court for necessary relief and clubbing of the offence under Section 494 along with other offences in this matter is not legally permissible, whereby the accused are prejudiced.

5. Besides the above said grounds, the petitioner Auxillia, in her petition, has taken another ground to the effect that she was, in no way, connected with the alleged demand of dowry and jewels by first and second accused, as, she, right from the date of her marriage or even from the marriage of the de facto complainant with first accused was living away from the family and that she never interfered with the affairs of the de facto complainant and that she was an utter stranger to the domestic affairs of first accused and, hence, she had not played any role in the matter, so as to attract the provisions of IPC and Dowry Prohibition Act.

6. As far as the first point, namely, territorial jurisdiction of first respondent is concerned, it was much said that the averments in the complaint would clinchingly show that in Chennai, no part of cause of action arose and no police station or any Court in Chennai could exercise jurisdiction over the matter.

7. In my view, the said contention is not tenable, for the reason that a reading of the complaint, charge sheet and the charges framed by the Court as well would vividly indicate that major portions of cause of action for the complaint have arisen in Chennai, which are being enumerated as below:

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(a) At the time of marriage, there was a demand for Rs.6.00 lakhs in cash and 80 sovereigns of gold jewellery, for which the parents of de facto complainant offered 50 sovereigns of gold jewels and Rs.1.00 lakh in cash.

(b) In the year 2001, while the de facto complainant was at Singapore with first accused, second and third accused contacted first accused from Chennai over phone, pursuant to which, first accused demanded Rs.10.00 lakhs as dowry from the de facto complainant.

(c) After the de facto complainant was sent from Singapore with second accused by first accused, while she was at Chennai, second accused told the de facto complainant in April,2002, that first accused was coming in that month and only if she arranged Rs.10.00 lakhs, they would send her to Singapore with first accused, otherwise they would perform second marriage to first accused. Thereafter, the de facto complainant went to the house of third accused at Shenoynagar in Chennai and asked her to do favour to her, for which third accused replied that they would not take any steps, if Rs.10.00 lakhs was not paid.

(d) On 24.04.2005, second accused told the father of the de facto complainant that on that day itself, first accused came to India and only if the demanded dowry in question was paid, his daughter would lead a happy married life.

8. The above said allegations would clearly show that sufficient portions of cause of action had taken place at Chennai. Under the circumstances, the contention that no cause of action has arisen at Chennai would not be countenanced.

9. Learned Government Advocate (Criminal Side) would draw attention of this Court to a decision of the Hon'ble Supreme Court in Satvinder Kaur v. State (Govt.of Delhi) and another, 1999 Supreme Court Cases (Cri) 1503, wherein it has been held that at the stage of investigation, no question of interference under Section 482 Cr.P.C. would arise, on the ground that the investigating officer has no territorial jurisdiction and after investigation is over, if the investigating officer arrives at a conclusion that cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then, he is required to submit a report accordingly under Section 170 Cr.P.C. and to forward the case to the Magistrate to take cognizance of the offence.

10. In the said decision, the Supreme Court has elaborately dealt with the statutory provisions on the subject and laid down a law to be followed by the Courts of the country. Further, after analysing the import of Sections 177 and 178 Cr.P.C., it is observed therein as under :

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"A reading of Sections 177 and 178 Cr.P.C. would make it clear that Section 177 provides for "ordinary" place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime."

11. The Apex Court also dealt with the power exercisable by High Court, conferred under Section 482 Cr.P.C. and rendered findings in the following terms :

"The legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has to no jurisdiction to examine the correctness or otherwise of the allegations."

12. Following the dictum laid down by the Supreme Court, in this case, it is to be held that the requests of the petitioners are not at all supported by settled legal positions. In the first place, ample averments with reference to the jurisdiction point of view are available in the complaint itself, on the basis of which charge sheet was laid by the police and charges were framed by the Court. In another angle, even if the allegations do not satisfy the Court as to the point of territorial jurisdiction, the law does not permit for quashing of the proceedings in toto, but, provides for a direction to the investigating officer to submit a report under Section 170 Cr.P.C. and to forward the case to the Magistrate, who is empowered to take cognizance of the offence.

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13. In so far as the first contention with regard to the territorial jurisdiction is concerned, the petitioners have to be out of Court and, as regards the charge under Section 494 IPC, it is the outcry of the first petitioner that the police have no power to investigate, but the law is otherwise.

14. It is true, as mentioned in Section 198 (c) Cr.P.C., if the aggrieved person is the wife, her close relative has to file a private complaint before the jurisdictional Magistrate and, since it is a non-cognizable offence, police are precluded from investigating the case. But, Section 155 (4) Cr.P.C. contemplates that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable offence, notwithstanding that the other offences are non-cognizable.

15. While the intent of the said provision is taken for consideration with respect to the request of the petitioners, though the offence under Section 494 ICP is a non-cognizable one, since the police have investigated the same along with other cognizable offences viz., Sections 498A IPC and 4 of Dowry Prohibition Act, it is to be deemed to be a cognizable offence and the hands of police are not tied in this regard and the police can very well investigate the offence under Section 494 IPC also, along with other offences.

16. The contention of the petitioner Auxillia that she was away from the family of first and second accused and that she had no links with them as regards the demand of dowry from the de facto complainant and, therefore, she should be absolved from the liability, in my view, suffers outright rejection. As already stated, the allegations in the First Information Report go to the effect that third accused, namely, petitioner Auxillia also played a considerable role in the demand of dowry from the de fact complainant and there is no circumstance to infer that she was away from the family affairs of first and second accused. She has got every opportunity to establish her contention at the time of trial and quashment of the proceedings against her cannot be thought of, at this stage.

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17. For the foregoing reasons, the irresistible conclusion, to be arrived at by this Court, is, rejection of contentions of the petitioners and the complaint is exhaustive in nature as to the point of territorial jurisdiction and criminality of all the accused. As such, these petitions are dismissed. Consequently, the connected Criminal M.P.Nos.1 and 4 of of 2007 in both the petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The IV Metropolitan Magistrate,
   Saidapet, Chennai.

2. -do-thro' The Chief Metropolitant Magistrate,
   Egmore, Chennai.

3. The Assistant Commissioner of Police,
   W-19 All Women Police Station,
   Adyar, Chennai - 600 020.

4. The Public Prosecutor,
   High Court, Madras.

1 cc To M/s.Uma Shankari, Advocate, SR.62241.
1 cc To M/s.Ram & Ram, Advocate, SR.62048.

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RS(CO)
RVL 17.10.2007

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